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APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-1377

RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Petitioner

—v.—

THE CITY OF NEW YORK ON BEHALF OF ITSELF AND ALL OTHER SIMILARLY SITUATED MUNICIPALITIES WITHIN THE STATE OF NEW YORK

CITY OF DETROIT.

No. 73-1378

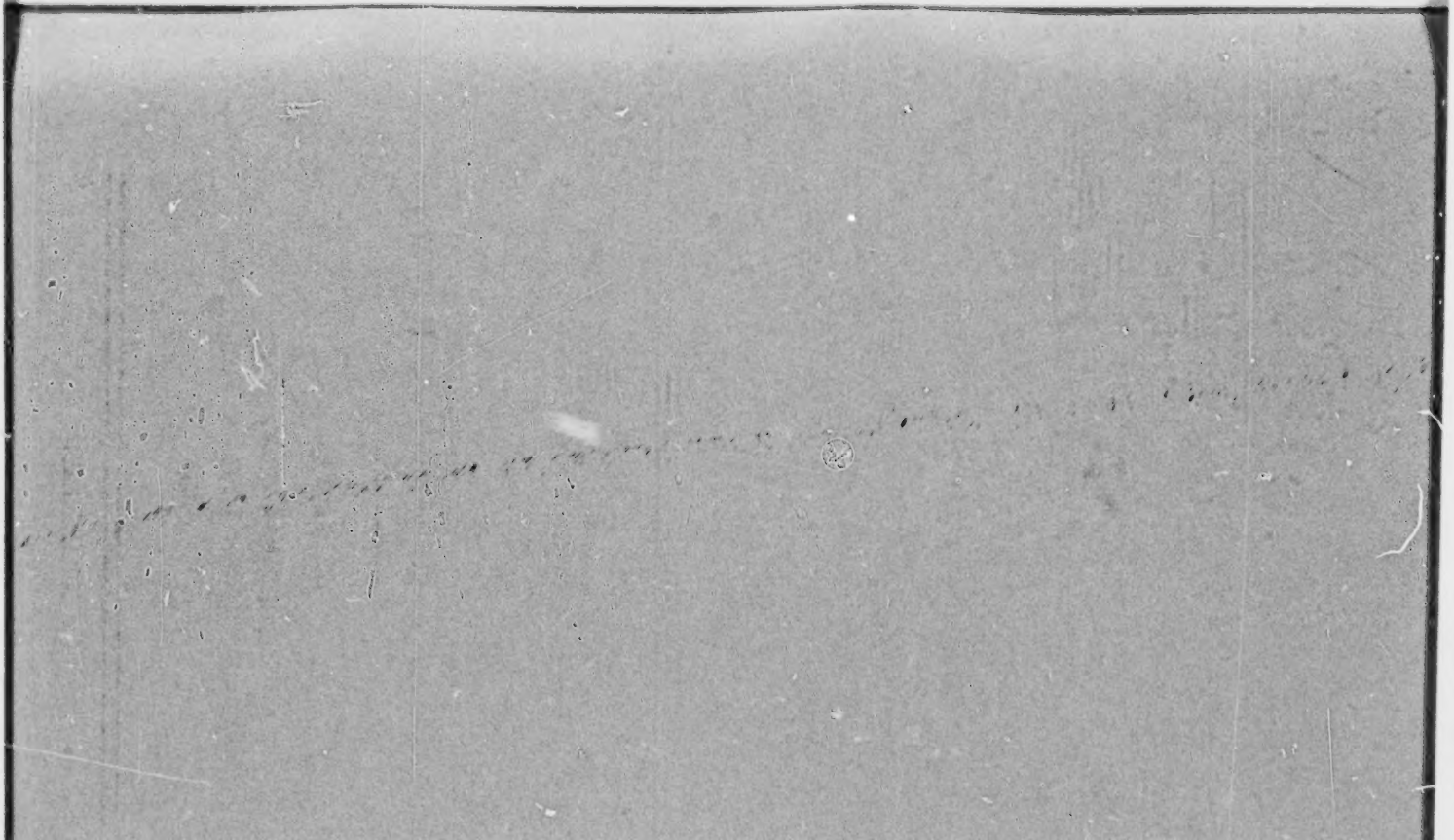
RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Petitioner

—v.—

CAMPAIGN CLEAN WATER, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED MARCH 11, 1974
CERTIORARI GRANTED APRIL 29, 1974



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Case No. 2466-72

THE CITY OF NEW YORK on behalf of itself and all other similarly situated municipalities with the State of New York
CITY OF DETROIT (PARTY-PLAINTIFF)

vs.

WILLIAM D. RUCKELSHAUS, as Administrator of the United States Environmental Protection Agency

ACTION FOR DECLARATORY JUDGMENT

	Filings—Proceedings
Dec. 12, 1972	Complaint, appearance, Exhibit—filed.
Dec. 12, 1972	Summons, Copies (3) and Copies (3) of Complaint issued—all served Dec 13.
Jan. 19, 1973	Motion of Anthony R. Martin—Trigona for leave to intervene, to consolidate and transfer; exhibits (2) c/m ....; Deposit $5.00 by Martin-Trigona.
Jan. 23, 1973	Motion of Plaintiff for extension of time to respond to motion of Anthony R. Martin-Trigona to intervene; c/m Jan. 23, 1973.
Jan. 24, 1973	Motion of defendant for enlargement of time to respond to motion to intervene and motion to consolidate; P&A; c/m Jan 24, 1973.
Jan. 24, 1973	Appearance of Arnold T. Aikens, Assistant U.S. Attorney, David J. Anderson, Stuart E. Schiffer and Dennis G. Linder, Civil Division, U.S. Department of Justice.

	Filings—Proceedings
Jan. 29, 1973	Order granting plaintiff's motion for extension of time to respond to motions of Anthony R. Martin-Trigona to intervene, consolidate and transfer to and including Feb. 7, 1973. (N) Gasch, J.
Jan. 29, 1973	Order granting defendant's motion for enlargement of time to respond to motions to intervene, consolidate and transfer of Anthony R. Martin-Trigona to and including Feb. 1, 1973. (N) Gasch, J.
Feb. 1, 1973	Opposition of defendant to motion to intervene and to consolidate and transfer; P&A. c/m Feb. 1, 1973.
Feb. 1, 1973	Memorandum of P&A by plaintiff in opposition to motion to intervene; table of cases; c/m Feb. 1, 1973.
Feb. 6, 1973	Memorandum, opinion and Order denying motion of Anthony R. Martin-Trigona to intervene and consolidate action with similar action pending in the U.S. District Court for the Northern District of Illinois. (N) Gasch, J.
Feb. 12, 1973	Motion of plaintiff for summary judgment and to determine that this action may be maintained as a class action; statement; affidavit; P & A. table of cases; memorandum; exhibits A & B. c/m Feb. 12.
Feb. 12, 1973	Motion of defendant to dismiss; P & A. c/m Feb. 12.
Feb. 20, 1973	Stipulation of parties extending to and until March 1, 1973, for defendant to file opposition to motion of plaintiff for summary judgment. (N) Gasch, J.

	Filings—Proceedings
Feb. 23, 1973	Application of Senator Douglas LaFollette for permission to file brief as amicus curiae; Exhibit, appendix 1. Appearance of Senator Douglas LaFollette. (314 SE Capitol Bldg., Madison, Wisconsin, 53701)
Feb. 26, 1973	Order that Douglas LaFollette is permitted to file a brief as amicus curiae; all pleadings to be filed by March 5, 1973. (N) Gasch, J.
Mar. 1, 1973	Memorandum of P & A by plaintiff in opposition to defendants motion to dismiss; table of cases; table of Authorities; exhibit A; c/m March 1.
Mar. 2, 1973	Opposition of defendant to plaintiff's motion for summary judgment; P & A., statement. c/m March 1.
Mar. 5, 1973	Affidavit of Edward Lloyd, of serving copy or order of February 27, 1973 to counsel.
Mar. 22, 1973	Motion of City of Detroit, a Michigan Municipal Corp., for leave to intervene as a party-plaintiff, brief; affidavit of Gerald Remus; exhibit. c/m March 15. Deposit $5.00 by Rhyne. Appearance of Charles S. Rhyne.
Mar. 27, 1973	Motion of intervening plaintiff's for summary judgment; P&A; Table of Contents; table of cases; table of authorities statement, affidavit. c/m March 23.
Apr. 2, 1973	Motion of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America for leave to file amicus curiae; memorandum. Exhibit. c/m Mar 30, 1973. Appearance of Stephen I. Schlossberg, 8000 E. Jefferson Ave., Detroit, Mich., 48214.

	Filings—Proceedings
Apr. 3, 1973	Order granting motion of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America for leave to file a memorandum amicus curiae in support of plaintiffs motion for summary judgment. (N) Gasch, J.
Apr. 3, 1973	Order granting the motion of the City of Detroit to intervene. (N) Gasch, J. (signed 4-2-73).
Apr. 5, 1973	Request of City of Detroit, Intervenor plaintiff, for oral argument on motion for summary judgment.
Apr. 5, 1973	Supplemental affidavit by plaintiff in support of motion for summary judgment; Exhibit A, B, C, and D. c/s 4/5/73.
Apr. 5, 1973	Motion of the defendant to dismiss heard and taken under advisement; motion of plaintiff for summary judgment heard and taken under advisement. (Rep: Duane Duschaine) Gasch, J.
Apr. 6, 1973	Appearance of Evan A. Davis, Assistant Corporation Counsel, New York, New York.
Apr. 6, 1973	Appearance of Maureen P. Reilly, Assistant Corporation Counsel, Detroit, Michigan.
May 8, 1973	Memorandum & opinion denying motion of defendant to dismiss complaint; granting motion of plaintiff for summary judgment; and action to be maintained as a class action; (N). Gasch, J.
May 8, 1973	Order granting motion of plaintiff for summary judgment & action to be maintained as a class action; denying motion of defendant to dismiss. (N) Gasch, J.

Filings—Proceedings

May 18, 1973	Order substituting the fourth line of page 2 of the Opinion of May 8, 1973 to read "pursuant to 505(e) of the Act" instead of "Pursuant to 505(a) of the Act" (N) (signed 5-17-73) Gasch, J.
May 24, 1973	Notice of appeal by defendants from order of 5-8-73. Copies mailed to James R. Atwood and Maureen P. Reilly.
May 24, 1973	Motion of defendant for stay pending appeal; P & A; c/m 5-23-73.
June 4, 1973	Points and Authorities of plaintiff, City of New York, in opposition to motion for stay pending appeal; c/m 6-4-73.
June 12, 1973	Reply of defendant to plaintiffs partial opposition to his motion for stay pending appeal c/m 6-12-73.
June 14, 1973	Order granting motion of defendant staying order dated May 8, 1973; parties shall confer and attempt to agree upon an expedited briefing schedule in the Court of Appeals. (N) Gasch, J.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 2466-72

THE CITY OF NEW YORK, Municipal Building, New York, N.Y. 10007 (212) 566-2091, on behalf of itself and all other similarly situated municipalities within the State of New York, PLAINTIFF

—against—

WILLIAM D. RUCKELSHAUS, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-2673, as Administrator of the United States Environmental Protection Agency, DEFENDANT

COMPLAINT

ACTION FOR DECLARATORY JUDGMENT AND MANDAMUS

Plaintiff, The City of New York, by its attorneys, complaining of defendant, alleges:

I

COMPLAINT

1. This is an action for a declaratory judgment and mandamus to compel defendant to comply with the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, 86 Stat. —— [hereinafter "Act"], by allotting to the State of New York the amount mandated by section 205(a) of the Act.

II

JURISDICTION AND VENUE

2. This action is brought pursuant to section 505(e) of the Act, 5 U.S.C. §§ 701-706 and 28 U.S.C. §§ 1361,

2201. This Court has jurisdiction of this action by virtue of 28 U.S.C. §§ 1331, 1332, because this action arises under the laws of the United States, because there is diversity of citizenship between the parties and because the amount in controversy exceeds $10,000, exclusive of interest and costs. This Court also has jurisdiction of this action by virtue of 28 U.S.C. § 1361, because the action is in the nature of mandamus to compel an officer of an agency of the United States to perform a duty owed to the plaintiffs. Finally, this Court has jurisdiction of this action by virtue of section 11-501(4) of the District of Columbia Code, because the amount in controversy exceeds $50,000, exclusive of interest and costs. An actual and justicable controversy exists between the parties regarding which plaintiffs require mandatory relief, as well as a declaration by the Court of their rights and of defendant's obligations and duties.

Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(e).

III

The Parties

3. At all times hereinafter mentioned, plaintiff, The City of New York [hereinafter "City"], was and is a municipal corporation organized and existing under the laws of the State of New York. The City's principal office is at City Hall, New York, New York. The City is a "municipality," as that term is defined by section 502(4) of the Act.

4. At all times hereinafter mentioned, defendant, William D. Ruckelshaus [hereinafter "Administrator"], was and is the Administrator of the United States Environmental Protection Agency. The Administrator is charged by section 101(d) of the Act with the responsibility of administering the Act. The Administrator performs his official acts (including the act complained of herein) in and is officially a resident of the District of Columbia. The Administrator is not a citizen of the State of New York.

IV

Class Action Allegations

5. By virtue of section 201(g)(1) of the Act the City, and any other municipality (as that term is defined by section 502(4) of the Act) within the State of New York, may receive directly federal grants for the construction of publicly owned treatment works. The Administrator's refusal to allot to the States, pursuant to section 205 of the Act, the full amount of the sums authorized to be appropriated by section 207 of the Act injures the City and all other municipalities within the State of New York in the same manner. Specifically, the Administrator's failure to allot the sum required by the Act to be allotted to the State of New York significantly limits the number and amounts of the federal grants to the City and such other municipalities which can be obligated by the Administrator. Therefore, this action raises questions of law and fact common to the City and such other municipalities, the City's claims herein are typical of the claims of such other municipalities and the City will fairly and adequately protect the interests of such other municipalities. This action is maintainable as a class action in accordance with Rule 23(b)(1)(A), (b)(1)(B) and (b)(2), Federal Rules of Civil Procedure.

V

Statutory Provisions

6. The Act was passed on October 18, 1972, over the veto of the President.

7. Section 101(a)(4) of the Act states that "it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works" for the treatment of wastes that are discharged into the nation's waters.

8. Title II of the Act (§§ 201-212)—entitled "GRANTS FOR CONSTRUCTION OF TREATMENT WORKS"—sets forth the procedure by which States and

municipalities may secure federal financial assistance in the amount of 75 per cent of the cost of municipal sewers and treatment works. As set forth with particularity hereinafter, this procedure provides for the allotment among the States, pursuant to a formula, of the $11 billion available for grants to States and municipalities in the current and next succeeding federal years.

9. Section 201(g) of the Act authorizes the Administrator "to make grants to any . . . municipality . . . for the construction of publicly owned treatment works." By virtue of section 203(a) of the Act a grant—which is made when the Administrator approves a plan for a construction project—is "a contractual obligation of the United States." The Act does not require the Administrator to approve all projects that are submitted to him. Rather, he has broad discretion to determine whether a proposed project satisfies the criteria set forth in section 204; for example, that the applicant can assure proper and efficient operation of the project and that the capacity of the project is such that it will meet the needs to be served.

10. Section 203(a) provides further that grants to a State or a municipality within the State may be made only "from funds allotted to the State under section 205."

11. Section 205(a) mandates allotments. It provides:

> Sums authorized to be appropriated pursuant to section 207 for each fiscal year beginning after June 30, 1972, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the

States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92-50. Allotments for fiscal years which begin after the fiscal year ending June 30, 1974, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 516(b) of this Act and only after such revised cost estimate shall have been approved by law specifically enacted hereafter.

12. Section 207 authorizes appropriations in the amount of $5 billion, $6 billion and $7 billion for the fiscal years 1973, 1974 and 1975, respectively. It provides:

> There is authorized to be appropriated to carry out this title, other than sections 208 and 209, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000.

13. By virtue of sections 205(a) and 207 the Administrator is required to allot among the States $5 billion for the fiscal year 1973 and $6 billion for the fiscal year 1974. No provision of the Act or of any other law affords the Administrator discretion to reduce these allotments, whether by direction of the President or otherwise.

VI

Unlawful Acts

14. By letter dated November 22, 1972 (Exhibit 1) the President directed the Administrator to withhold a portion of the allotments mandated by the Act. That letter says in relevant part:

> I stated [in my veto message] that even if the Congress were to default its obligation to the taxpayers through enactment of this legislation, I would not

default mine. Under these circumstances, I direct that you not allot among the States the maximum amounts provided by section 207 of the Federal Water Pollution Control Act Amendments of 1972. No more than $2 billion of the amount authorized for the fiscal year 1973, and no more than $3 billion of the amount authorized for the fiscal year 1974 should be allotted.

15. By Regulation promulgated and effective on December 8, 1972, the Environmental Protection Agency stated that, "in accordance with the President's letter of November 22, 1972," it was allotting among the States for the fiscal years 1973 and 1974 "sums not to exceed $2 billion and $3 billion, respectively" (37 Fed. Reg. 26282, § 35.910-1(a) (1972)), instead of the $5 billion and $6 billion required by the Act.

16. As a result of these reduced allotments, the amounts allotted to the State of New York, available for grants to the State and municipalities of the State, were $221.2 million and $331.7 million for the fiscal years 1973 and 1974, respectively, instead of the $553 million and $663.4 million required by the Act. 37 Fed. Reg. 26282, § 35.910-1(b) (1972).

VII

Injury

17. By directing the Administrator to allot among the States the sums authorized by section 207 of the Act, Congress intended that certain sums be immediately available in each State for obligation. Although the Administrator has discretion with regard to the obligation of sums after allotment, his discretion is not unlimited and is subject to review under applicable provisions of the Act and other laws. Thus, the Administrator's refusal to allot the sums authorized by section 207 directly injures plaintiffs because it permanently withdraws from availability in New York large portions (60 per cent in fiscal 1973 and 50 per cent in fiscal 1974) of the obliga-

tional authority conferred upon him by Congress. Plaintiffs must necessarily reduce the number of treatment works projects for which they can apply to the Administrator for federal grant assistance.

18. Section 205(b)(1) of the Act provides that any sums allotted to a State pursuant to section 205(a) "shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized." Section 205(b)(1) further provides that at the end of such one year period, sums allotted to a State which remain unobligated shall be immediately reallotted among the States by the Administrator. Such reallotments are to be in addition to any other allotments made to the States. Thus, section 205(b)(1) creates a mechanism to make allotted sums continually available, until obligated, to fund federal grants for treatment works. However, the Administrator's refusal to allot the full amount of the sums authorized by section 207 permanently removes such unallotted sums from the operation of the statutory mechanism for continual funding. Plaintiffs are injured by the Administrator's action because they are forever denied the availability of such unallotted sums for federal grants.

19. As a further result of the Administrator's illegal reduction of allotments, some treatment works that the Congress has determined are needed by the plaintiffs simply will not be constructed. The allotment amounts and distribution formula set forth in section 205(a) of the Act were based on a Congressional estimate of the current needs of all States and municipalities. Since any project that is the recipient of a grant under the Act must be 75 per cent funded by federal monies (section 202(a)), whatever federal money is available cannot be distributed among all needed projects; rather, it must be used to finance 75 per cent of each project as it is approved. Thus, many needed projects will simply go unbuilt because, in the absence of federal funds caused by the Administrator's illegal reduction, there will be insufficient federal funds to provide the 75 per cent federal share.

20. The Administrator's illegal reduction of allotments means that some of the plaintiffs—specifically, those that are unable to build needed projects for the reasons set forth in the immediately preceding paragraph—will be forced to violate the effluent standards established by section 301 of the Act, and thus will be subject to legal actions by the Administrator under section 309 of the Act and by any citizen under section 505 of the Act.

21. To the extent that the Administrator's illegal reduction of allotments results in needed treatment works not being built, the waters in the affected areas will continue to deteriorate, and the plaintiffs' residents will remain deprived of the environmental and recreational benefits that Congress intended to secure for them by passage of the Act.

WHEREFORE, plaintiffs demand judgment herein:

(a) Adjudging and declaring that section 205 (a) of the Act requires the Administrator to allot among the States $5 billion and $6 billion for the fiscal years 1973 and 1974, respectively; and

(b) Ordering the Administrator to revise the allotments he already has made, in purported compliance with section 205 (a), for the fiscal years ending June 30, 1973 and June 30, 1974, and to make said allotments in the amount of $5 billion for the fiscal year ending June 30, 1973 and $6 billion for the fiscal year ending June 30, 1974; and

(c) Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Norman Redlich
NORMAN REDLICH
Corporation Counsel of the
City of New York
Municipal Building
Borough of Manhattan
New York, New York 10007
(212) 566-2091

/s/ James R. Atwood
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Covington & Burling
888 - 16th Street, N.W.
Washington, D. C. 20006
(202) 293-3300

JOHN R. THOMPSON
EVAN A. DAVIS
GARY MAILMAN
ALEXANDER GIGANTE, JR.,

Of Counsel

EXHIBIT I

THE WHITE HOUSE

WASHINGTON

November 22, 1972

Dear Mr. Ruckelshaus:

The purpose of this letter is to request your cooperation in my attempt to maintain a strong and growing economy without inflation or tax increases.

Notwithstanding my earlier disapproval, the Congress enacted the Federal Water Pollution Control Act Amendments of 1972. This act permits a significant increase over our programs to fund the construction of wastewater treatment facilities. During this Administration, budget requests for this purpose have grown from $214 million for the fiscal year 1969 to $2 billion for the fiscal year 1973. The new act authorizes vastly larger sums. Furthermore, the Federal share of project costs has been increased significantly to a level of 75 percent.

In addition to the program increases in the new legislation, $5.1 billion of Federal funds are already committed or available for spending under former programs. Included in these amounts are:

- $1.9 billion to reimburse State and local governments which have funded projects without full Federal assistance.
- $1.8 billion of Federal funds to liquidate prior obligations for State and local projects.
- $1.4 billion in unobligated balances carried forward from fiscal year 1972 and prior years.

I stated that even if the Congress were to default its obligation to the taxpayers through enactment of this legislation, I would not default mine. Under these circumstances, I direct that you not allot among the States the maximum amounts provided by section 207 of the

Federal Water Pollution Control Act Amendments of 1972. No more than $2 billion of the amount authorized for the fiscal year 1973, and no more than $3 billion of the amount authorized for the fiscal year 1974 should be allotted. These amounts will provide for improving water quality and yet give proper recognition to competing national priorities for our tax dollars, the resources now available for this program and the projected condition of the Federal treasury under existing tax laws and the statutory limit on the national debt.

I believe this course is the most responsible one—one which deals generously with environmental problems and at the same time recognizes the highest national priority, the need to protect the working men and women of America against tax increases and renewed inflation.

Sincerely,

/s/ Richard Nixon

Honorable William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2466-72

[Filed Feb. 12, 1973, James F. Davey, Clerk]

THE CITY OF NEW YORK, PLAINTIFF

v.

WILLIAM D. RUCKELSHAUS, DEFENDANT

MOTION TO DISMISS

Defendant William D. Ruckelshaus, Administrator of the Environmental Protection Agency, by his undersigned attorneys, hereby respectfully moves the Court, pursuant to Rule 12 of the Federal Rules of Civil Procedure, to dismiss this action. The grounds for this Motion are that the Court lacks jurisdiction over the subject matter of this suit and that the Complaint fails to state a claim upon which relief can be granted.

In support of this Motion, the Court is respectfully referred to the Points and Authorities filed herewith.

Respectfully submitted,

/s/ Harlington Wood, Jr.
HARLINGTON WOOD, JR.
Assistant Attorney General

/s/ Harold H. Titus, Jr.
HAROLD H. TITUS, JR.
United States Attorney

/s/ Harland F. Leathers
HARLAND F. LEATHERS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2466-72

[Filed Feb. 12, 1973, James F. Davey, Clerk]

THE CITY OF NEW YORK, on behalf of itself and all other similarly situated municipalities within the State of New York, PLAINTIFF

—against—

WILLIAM D. RUCKELSHAUS, as Administrator of the United States Environmental Protection Agency, DEFENDANT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DETERMINE THAT THIS ACTION MAY BE MAINTAINED AS A CLASS ACTION

Plaintiff respectfully moves the Court, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, to enter summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law. Plaintiff also moves the Court to enter an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action may be maintained as a class action. These motions are based upon the Complaint and attached Exhibit, plaintiff's Statement of Material Facts As To Which Plaintiff Contends There Is No Genuine Issue, the affidavit of Martin Lang, and plaintiff's Memorandum of Points and Authorities, all of which are filed herewith.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2466-72

THE CITY OF NEW YORK, PLAINTIFF

v.

WILLIAM D. RUCKELSHAUS, DEFENDANT

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant, by his undersigned attorneys, hereby opposes plaintiff's Motion for Summary Judgment. The grounds for this opposition are that there exists a disputed issue of material fact and that, even assuming that there is no genuine issue as to any material fact, plaintiff is not entitled to judgment as a matter of law. In support of this opposition, the Court is respectfully referred to the Points and Authorities filed herewith

and to the Points and Authorities filed in support of defendant's Motion to Dismiss.

Respectfully submitted,

HARLINGTON WOOD, JR.
Assistant Attorney General

HAROLD H. TITUS, JR.
United States Attorney

HARLAND F. LEATHERS

STUART E. SCHIFFER

DAVID J. ANDERSON

DENNIS G. LINDER

Attorneys, Department of Justice
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 2466-72

[Filed Feb. 12, 1973, James F. Davey, Clerk]

THE CITY OF NEW YORK, on behalf of itself and all other similarly situated municipalities within the State of New York, PLAINTIFF

—against—

WILLIAM D. RUCKELSHAUS, as Administrator of the United States Environmental Protection Agency, DEFENDANT

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARTIN LANG, being duly sworn, deposes and says:

1. I am the Commissioner of the Department of Water Resources (hereinafter "DWR") of the Environmental Protection Administration (hereinafter "EPA") of the City of New York (hereinafter "City"). As Commissioner of DWR, it is my responsibility to administer those functions delegated to EPA by Chapter 57 of the New York City Charter which relate to the construction, maintenance and operation of the City's sewage treatment plants. It is also my responsibility to administer the functions of EPA relating to the regulation and control of emissions into the waters within and about the City of harmful or objectionable substances, contaminants and pollutants.

2. I am a Professional Engineer, licensed by the State of New York. In 1935 I received a B.S. in engineering from the College of the City of New York. In 1954 I

received a Master's degree in civil engineering from New York University.

3. The purpose of this affidavit is to show the Court that the allotment reductions of which the City complains in this action, if sustained by this Court, will cause the City to delay and reduce its plans to construct needed sewage treatment works projects. Such delay and reduction necessarily will result in higher costs to the City (as well as to the State of New York and the Federal Government) in constructing needed treatment works, further degradation of the environmental quality of the navigable waters in and around the City, and violations by the City of the interim and final effluent standards of the Federal Water Pollution Control Act Amendments of 1972 (the "Act"). These results, moreover, will be visited not only upon the City, but upon many if not all of the other municipalities in the State of New York (hereinafter the "State") as well as across the nation.

4. The State has approved plans and specifications of certain of its municipalities for the construction of approximately 188 sewage treatment projects, expected to cost approximately $2 billion. These projects do not represent all the treatment works that will be needed in the State if the goals of the Act are to be achieved. Rather, they are needed projects that already have been approved by the State.

5. Because of the Federal Government's past failures to provide adequate financing, these approved projects have not been put out for bids.

6. Five of the projects are City projects that were submitted to the State in 1971. The total estimated cost of these five projects at the time that they were submitted was approximaely $591,842,000. There estimated cost now, as a result of a normal eight per cent (8%) per year escalation, is $637,287,000.

7. In purported compliance with the Act the Administrator, on December 8, 1972, allotted to the State $552,900,000, to be available in the fiscal years 1973 and 1974 for the 75 per cent federal funding of treatment works projects. The City contends in this action that the Act

requires the Administrator to allot $1,216,400,000 to the State for said fiscal years. Thus, it is the City's position that the Administrator has illegally withheld $663,500,000 from the State for possible use by municipalities within the State.

8. On November 15, 1972, I met with Henry L. Diamond, Commissioner of the Department of Environmental Conservation of the State of New York (hereinafter "DEC"), at which time Mr. Diamond apprised me that the Administrator was expected to allot to the State $552,900,000 for the fiscal years 1973 and 1974, with $221.2 million of this amount to be attributed to the fiscal year 1973. The Administrator's action of December 8, 1972 confirmed Mr. Diamond's expectation.

9. Under Section 204(a)(3) of the Act the Administrator may not approve a grant for a project until the project has been certified by the appropriate State agency as entitled to priority over other works in the State. Mr. Diamond told me at our November meeting that, *as a result of the expected allotment reduction by the Administrator*, the State would certify as entitled to priority in the fiscal year 1973 City projects in the amount of $90 million, or about forty per cent (40%) of the $221.2 million dollars actually allotted to the State for said fiscal year. This $90 million figure was confirmed to me by George M. Humphreys, Assistant Commissioner of DEC, on December 1, 1972, after the Administrator had publicly announced (on November 28, 1972) the reduction of allotments.

10. At our meeting of November 15, 1972 I was advised by Commissioner Diamond that DEC would certify to the United States Environmental Protection Agency (hereinafter "USEPA") as a priority project the upgrading of the City's Oakwood sewage treatment plant. Subsequently, by telegram dated January 5, 1973 the Commissioner notified me that the construction of the City's Red Hook plant was also being certified as a priority project.

11. The reduced allotment to the State will cause an indefinite delay in the commencement of the upgrading of three of the City's five needed sewage treatment

plants. Furthermore, although the other two projects—Oakwood and Red Hook—have been certified by the State in accordance with sections 204(a)(3) and 303(e) of the Act as priority projects for federal assistance, the upgrading of Oakwood and the construction of Red Hook must be conducted on a piecemeal basis because of the reduced level of such assistance.

12. The consequent delay in the commencement of the upgrading of three plants and in the time of completion of the upgrading of Oakwood (because it must be done on a piecemeal basis, will cause all such upgrading projects to be completed after July 1, 1977, which is the deadline established by section 301(b)(1)(B) of the Act for compliance by these plants with the effluent limitations promulgated pursuant to section 304(d)(1). Furthermore, under section 304(d)(1), Red Hook must be completed and in compliance with the effluent limitations within four years after its approval by the Administrator. Four years is the approximate construction time for a sewage treatment plant wher construction is fully funded. To the extent that construction is conducted piecemeal, when each phase of construction must await the injection of additional funds, the time of construction is necessarily extended beyond four years.

13. The specifics of the City's situation illustrate the effect of the reduction of the allotment to the State. Because of the unavailability of funds, the upgrading of Oakwood cannot include, at the present, construction of a substantial portion of the important interceptor sewer system.

14. The construction of the Red Hook plant, which, when completed, will eliminate what is presently the daily discharge into New York Harbor of 70 million gallons of raw sewage, cannot begin in any significant degree. Although the DEC has certified to the USEPA that the Red Hook project is a priority project, the reduced federal allotment will only permit the commencement of a small $14.7 million phase of construction. The total cost of the project, in today's market, is $305.4 million.

15. The discharges of raw sewage which the Red Hook plant is intended to eliminate are a cause of the pollution of the City's Sea Gate and Coney Island beaches (and a contributing factor to the pollution of some areas to be included in the Gateway National Park). To the extent that construction and completion of the Red Hook plant are delayed by reduced federal financial assistance, the adverse environmental and recreational effects of the sewage discharges will continue to be visited upon the City and its residents.

16. The upgrading of the three remaining plants—Coney Island, Owls Head and Newton Creek—at a total cost of approximately $220 million, must be indefinitely delayed because federal assistance is not sufficient to permit even a token beginning on these projects.

17. In a discussion with my immediate superior, Jerome Kretchmer, then the City's EPA Administrator, which was televised on public television on December 19, 1972, the Administrator of USEPA acknowledged that the reduction in allotments would seriously hamper the City's efforts to move forward with treatment plant upgrading and construction.

18. In conclusion, the only way the City, through the DWR, can comply with the Act and achieve the Act's water quality goals, is with federal assistance at the level envisioned by Congress.

/s/ Martin Lang
MARTIN LANG

Sworn to before me this 5th day of February, 1973.

/s/ Catherine A. McGuinness
CATHERINE A. MCGUINNESS
Notary Public
State of New York. No. 03-2621650. Qualified in Bronx County. Commission Expires March 30, 1973.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 2466-72

[Filed Apr. 5, 1973. James F. Davey, Clerk]

THE CITY OF NEW YORK, on behalf of itself and all other similarly situated municipalities within the State of New York, PLAINTIFF

—against—

WILLIAM D. RUCKELSHAUS, as Administrator of the United States Environmental Protection Agency, DEFENDANT

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARTIN LANG, being duly sworn, deposes and says:

1. I am the Commissioner of the Department of Water Resources (hereinafter "DWR") of the Environmental Protection Administration (hereinafter "EPA") of the City of New York (hereinafter "City"). As Commissioner of DWR, it is my responsibility to administer those functions delegated to EPA by Chapter 57 of the New York City Charter which relate to the construction, maintenance and operation of the City's sewage treatment plants. It is also my responsibility to administer the functions of EPA relating to the regulation and control of emissions into the waters within and about the City of harmful or objectionable substances, contaminants and pollutants.

2. I am a Professional Engineer, licensed by the State of New York. In 1935 I received a B.S. in engineering from the College of the City of New York. In 1954 I

received a Master's degree in civil engineering from New York University.

3. By affidavit dated February 8, 1973, I explained the effect of the allotment reduction on the City's water pollution control program. The purpose of this affidavit is to update my first affidavit by relating the events which have occurred since February 8.

4. In my earlier affidavit I noted that two of the City's sewage treatment plant projects—Oakwood and Red Hook—had been certified to the United States Environmental Protection Agency ("USEPA") by the State of New York as priority projects for federal grant assistance. (¶ 10). I also explained, however, that because of the allotment reduction these projects could only be funded in phases, thus delaying substantially their completion. (¶¶ 13, 14).

5. On March 1, 1973 USEPA notified the City that the first phases of the Oakwood and Red Hook projects had been approved. (The notices of approval are attached hereto as Exhibits A and B, respectively.) The grant agreements were executed by the City on March 6 (*see* Exhibits C and D) and are now binding obligations of the United States under section 203 of the Act.

6. USEPA has thus evinced its approval of the City's two priority sewage treatment projects. But because of reduced allotments, the level of funding is inadequate to complete either project. In the case of Red Hook, the federal grant ($11 million) will permit only a token start toward completion of a $305.4 million project.

7. Because the City has been forced to resort to phased funding of its two priority projects, it is placed in the precarious position of expending local funds to pay the local share of the cost of each phase without assurance of continued federal funding to complete the project. By virtue of the reduction in allotments, the City must bear the risk of either being left with incomplete and useless sewage treatment plants or being forced to complete the plants without federal assistance.

8. Furthermore, phased funding will prevent the completion of either project within the time parameters established by sections 301 and 304 of the Act. In addi-

tion to the continuation of the pollution of the City's waters which will be caused by the construction delay, the City's failure to meet the Act's deadlines will subject the City to citizens' and government suits to enforce compliance with the Act. It is not speculative to speak of the possibility of such suits in light of similar action taken by the United States against the City under the Refuse Act and old Water Pollution Control Act (*see United States* v. *Lindsay, et al.*, 72 C 1362 (E.D.N.Y. 7/17/72).

9. It is evident, then, that the City has been directly injured by the Administrator's action. The City's two priority projects are approved for federal funding, but at amounts less than would have been available had the authorized sums been alloted.

/s/ Martin Lang
MARTIN LANG

Sworn to before me this 3rd day of April, 1973.

/s/ John Calia
JOHN CALIA
Notary Public
State of New York. No. 41-5573935. Queens County. Certificate filed in New York County. Commission Expires March 30, 1974.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2466-72

[Filed May 8, 1973]

THE CITY OF NEW YORK, on behalf of itself and all other similarly situated municipalities within the State of New York, PLAINTIFF

THE CITY OF DETROIT, PLAINTIFF-INTERVENOR

v.

WILLIAM D. RUCKELSHAUS, as Administrator of the United States Environmental Protection Agency, DEFENDANT

ORDER

This action having come before the Court on defendant's motion to dismiss, the motions of the plaintiff and the intervening plaintiff for summary judgment, and plaintiff's motion to determine that this action may be maintained as a class action, and the Court having considered the pleadings, motions, oppositions, affidavits, and statements filed by the parties and having heard oral argument in open Court, and having found that there is no genuine issue as to any material fact, and having concluded that plaintiff is entitled to judgment as a matter of law, and for the reasons stated in the Opinion filed in this case, it is by the Court this 8th day of May, 1973,

ORDERED that defendant's motion to dismiss be, and the same hereby is, denied; and it is further

ORDERED that this action is to be maintained as a class action under Rule 23(b)(1) and (b)(2) of the Federal Rules of Civil Procedure on behalf of a class comprised of plaintiff and other municipalities similarly situated within the State of New York; and it is further

ORDERED that the motions of plaintiff and intervening plaintiff for summary judgment be, and they hereby are, granted; and it is further

ADJUDGED AND DECLARED that § 205(a) of the Water Pollution Control Act Amendments of 1972, P.L. 92-500, 86 Stat. 816, requires the defendant, as Administrator or Acting Administrator of the United States Environmental Protection Agency, to allot among the States $5 billion and $6 billion for the fiscal years 1973 and 1974, respectively; and it is further

ORDERED that the defendant and his subordinates be, and they hereby are, directed to annul and revoke by official act in writing the extant orders, regulations and other evidences of allotment under said Amendments of less than $5 billion and $6 billion for the fiscal years 1973 and 1974, respectively, and they are directed further to allot among the States, pursuant to said Amendments, the sum of $5 billion for the fiscal year 1973 and the sum of $6 billion for the fiscal year 1974.

/s/ Oliver Gasch
Judge

SUPREME COURT OF THE UNITED STATES

No. 73-1377

RUSSELL E. TRAIN, Administrator,
United States Environmental Protection Agency,
PETITIONER

v.

CITY OF NEW YORK, ET AL.

ORDER ALLOWING CERTIORARI—Filed April 29, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 73-1378 and a total of one hour is allotted for oral argument.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

CA 18-73-R

Jury demand date:

CAMPAIGN CLEAN WATER, INC.

vs.

ROBERT W. FRI, Acting Administrator
Environmental Protection Agency

Basis: Refusal by Govt. agency to allot authorized sum $11 Billion. 28 USC 1331 & 1361.

For plaintiff: Alfred Jerome Owings, Esq. 5421 Patterson Ave. City 23226. 288-4027.

Out-of-state counsel: Alan B. Morrison and W. Thomas Jacks, Suite 515, 2000 P St., N.W., Wash., D.C. 20036—phone: 202-785-3704.

For defendant: Harlington Wood, Jr., Asst. Atty. General and Brian P. Gettings, U.S. Atty., Ern. Dist. Va. and Harland F. Leathers, David J. Anderson, Dennis G. Linder, James R. Prochnow, Attorneys, Department of Justice.

Statistical Record	Costs	Date 1973	Name or Receipt No.	Rec.	Disb.
mailed	Clerk	1-15-73	FF	15.00	
		1-16-73	C/D59		15.00
mailed	Marshall				
Action:	Docket fee				
	Witness fees				
rose at:	Depositions				

Date	PROCEEDINGS
1973	
Jan. 15	Complaint filed and summonses issued.
Jan. 17	Marshal's return on summons as to all defendants listed, executed & filed.
March 19	Pltf's Motion for Summary Judgment with Supporting Memorandum of Points & Authorities filed.
March 19	Motion to dismiss filed by deft.
March 19	Brief in support of Deft's Motion to Dismiss filed.
March 30	Memorandum of Points & Authorities in Opposition to deft's Motion to Dismiss, filed by pltf.
April 4	Deft's Opposition to motion for summ. judgment filed, with supporting memorandum.
April 12	Order directing counsel to file such memoranda as they may deem appropriate with respect to the standing of plf. to maintain this action, ent. 4-12-73. Copies to counsel of record.
April 30	Plf's Memorandum in support of its standing to maintain this action, filed, with affidavit of Newton Ancarrow attached.
June 5	Memorandum of the court filed.
June 5	Order substituting Robert W. Fri, Acting Administrator of the Environmental Protection Agency, for William D. Ruckelshaus as the proper party deft; granting leave to plf. to proceed in this action on behalf of its members and those similarly situated in the Commonwealth of Va.; denying deft's motion to dismiss; granting plf's motion for summary judgment; it is declared that the announced policy of the Administrator to refuse to allot $6 billion of the designated $11 billion under S. 205 of the Federal Water Pollution Control

Date	PROCEEDINGS
1973	
	Act Amendments of 1972, 15USC1251 et seq. for the fiscal years 1973 and 1974 constitutes an abuse of discretion under the authority and powers conferred by the Act; said policy shall be and the same is hereby declared null and void; deft. directed to report to the Court within 10 days of this date those actions taken to conform the administration of the Act to the principles enunciated in the memorandum, ent. 6-5-73. Copies mailed all counsel of record.
June 6	Motion for stay of order of 6-5-73 until such time as the EPA has exhausted its appeals in this case, filed by deft.
June 8	Order denying motion of deft. for stay of order of 6-5-73 until they have exhausted appeals in this case; the deft. may move a Judge of the USCA for such stay as he or the Court may deem appropriate; staying order of 6-5-73 for a period of 10 days from 6-8-73, ent. 6-8-73. Copies to counsel.
June 18	Notice of appeal filed by defendant.
June 19	Defendant's motion for stay until 6-22-73, filed.
June 19	ORDER granting stay from order of 6-5-73 until 6-22-73, entered, filed.
June 20	Record on appeal, 1 vo., d41'd to Clerk, U.S.C.A.
July 12	Certified copy of order granting motion for a stay pending appeal, directing Clerk to calendar the appeal for the October term, re'cd from USCA, filed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Civil Action No. 18-73-R

[Filed Jan. 15, 1973, Clerk, U.S. Dist. Court, Richmond, Va.]

CAMPAIGN CLEAN WATER, INC.
Suite 605, Mutual Building, Richmond, Virginia 23219
PLAINTIFF

v.

WILLIAM D. RUCKELSHAUS, Administrator, Environmental Protection Agency, 1826 K Street, N.W., Washington, D.C. 20460, DEFENDANT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action seeking to compel the defendant William D. Ruckelshaus, Administrator of the Environmental Protection Agency ("Administrator"), to perform his duty under section 205(a) of the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, 86 Stat. 816, 837, (the "Act") to allot among the states the full sum authorized to be appropriated by section 207 of the Act for federal grants to states, municipalities, and other agencies for the construction of publicly owned waste treatment works.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1361.

3. The value of the amount in controversy exceeds $10,000.

4. Plaintiff Campaign Clean Water, Inc., a corporation incorporated under the laws of the Commonwealth of Virginia, was organized to promote the ecological and environmental advancement of Virginia. Its officers, directors, and financial contributors include Virginia residents who use the nation's waters for both sport and commercial fishing and for other recreation purposes.

In addition to its own organizational interests, Campaign Clean Water represents the interests of those Virginia residents in this action.

5. Section 210(g)(1) of the Act authorizes the Administrator to make grants to any state, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

Section 207 of the Act authorizes to be appropriated for the fiscal year ending June 30, 1973 ("fiscal 1973") a sum not to exceed $5 billion for, *inter alia*, carrying out section 201(g)(1). Section 207 also authorizes to be appropriated for the fiscal year ending June 30, 1974 ("fiscal 1974") a sum not to exceed $6 billion for the same purposes.

7. Section 205 of the Act states that sums authorized to be appropriated by section 207 for fiscal 1973 shall be allotted by the Administrator among the states within thirty days after the enactment of the Act, and that such sums shall be allotted in accordance with regulations promulgated by the Administrator in a prescribed ratio based on the treatment works construction needs of the States.

8. On November 28, 1972, defendant announced that only $2 billion of the $5 billion authorized to be appropriated by section 207 of the Act for fiscal 1973 and only $3 billion of the $6 billion authorized to be appropriated for fiscal 1974 would be allotted by him among the states and would be available for waste treatment works construction grants. Defendant stated that he was withholding the remaining $6 billion of allotments from the states at the direction of the President in keeping with the President's recently announced determination to cut federal spending for anti-inflationary reasons.

9. The action of the Administrator in refusing to allot among the states the full sum authorized to be appropriated by Congress in section 207 of the Act for fiscal 1973 and 1974 was unlawful, was outside the scope of his discretion and authority, and was a violation of defendant's duties to plaintiff and those persons who plaintiff represents, in that (a) the defendant lacks the discretion to refuse to allot among the states the full sums au-

thorized by Congress; or, alternatively, (b) the defendant abused whatever limited discretion he possesses by withholding a greater amount of funds than contemplated by the Congress under the Act.

10. The action of the defendant complained of in paragraph 8 significantly affects the interests of plaintiff and those persons it represents, in that it will delay the achievement of the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters, which is the objective of the Act, as set forth in section 101 thereof.

WHEREFORE, plaintiff prays for an order (1) declaring the action of the Administrator herein complained of to be unlawful and outside the scope of his discretion and authority; (2) directing the defendant to allot among the states the full sums of $5 billion and $6 billion authorized to be appropriated by section 207 of the Act for fiscal years 1973 and 1974, respectively; (3) granting such other and further relief as the Court may deem just and proper, including the retaining of jurisdiction to ensure that defendant does not, by other unauthorized means, prevent or defer the obligation by states, munipalities, and other authorized agencies of alloted sums.

Dated: Richmond, Virginia
January 15, 1973

/s/ Alfred Jerome Owings
ALFRED JEROME OWINGS
5421 Patterson Avenue
Richmond, Virginia 23226
(703) 288-4027

/s/ Alan B. Morrison
ALAN B. MORRISON

/s/ W. Thomas Jacks
W. THOMAS JACKS
Suite 515
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 18-73-R

CAMPAIGN CLEAN WATER, INC., PLAINTIFF

v.

WILLIAM D. RUCKELSHAUS, DEFENDANT

MOTION TO DISMISS

Defendant William D. Ruckelshaus, Administrator of the Environmental Protection Agency, by his undersigned attorneys, hereby respectfully moves the Court, pursuant to Rule 12 of the Federal Rules of Civil Procedure, to dismiss this action. The grounds for this Motion are that the Court lacks jurisdiction over the subject matter of this suit and that the Complaint fails to state a claim upon which relief can be granted.

In support of this Motion, the Court is respectfully referred to the Brief filed herewith.

Respectfully submitted,

HARLINGTON WOOD, JR.
Assistant Attorney General

BRIAN P. GETTINGS
United States Attorney

HARLAND F. LEATHERS

DAVID J. ANDERSON

DENNIS G. LINDER

JAMES R. PROCHNOW

Attorneys, Department of Justice
Attorneys for Defendant

SUPREME COURT OF THE UNITED STATES

No. 73-1378

RUSSELL E. TRAIN, Administrator, United States Environmental Protection Agency, PETITIONER

v.

CAMPAIGN CLEAN WATER, INC.

ORDER ALLOWING CERTIORARI—Filed April 29, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with No. 73-1377 and a total of one hour is allotted for oral argument.

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